THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No. 7304 of 1997

DATED: 08-08-2007

Between:

Devarakonda Srihari Rao

…Petitioner

and

Chairman and Disciplinary Authority,
A.P.Vikas Grameena Bank, Srikakulam
and others

…Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P.No. 7304 of 1997

Oral order:

The petitioner entered service as Junior Clerk-cum-Cashier in the Visakha Grameena Bank in 1981. He earlier worked as a Field Supervisor in 1984 and in 1989 he was transferred to Temburu Branch. On 11-1-1990 a shandy was allegedly conducted at Narayanavasala whereat serious irregularities with respect to the petitioner's functioning as an officer of the Bank were perceived. He was consequently placed under suspension from service on 15-3-1990. On 26-2-1991 a charge sheet was issued listing out 12 charges of misconduct. An Enquiry Officer was appointed and a due process of enquiry was conducted giving ample, adequate and fair opportunity to the petitioner. An enquiry report dated 16-8-1995 was submitted by the Enquiry Officer, a copy of which was also furnished to the petitioner, and his remarks thereupon solicited. On 29-9-1995 the petitioner responded to the findings in the enquiry report. Eventually by the order of the disciplinary authority dated
30-11-1995 a punishment of dismissal from service was imposed on the petitioner. Thereagainst the petitioner preferred an appeal to the Board of Directors on 28-12-1995 and on 12-11-1996 a communication was issued to the petitioner intimating that the Board of Directors of the Bank had considered the petitioner's appeal and have confirmed the punishment of dismissal as imposed by the disciplinary authority.

The petitioner assails the punishment of dismissal imposed by the disciplinary authority, as confirmed by the appellate authority i.e., the Board of Directors on a plurality of grounds including that the appellate confirmation is void and unenforceable, as the Chairman and Managing Director of the Bank was not only the disciplinary authority but also the Chairman of the Board of Directors and the same person acted both as the disciplinary authority as also the appellate authority.

The learned counsel for the petitioner also urged that the petitioner is not guilty of any embezzlement of funds or of any other misconduct as alleged in the charges leveled against him and that the punishment of dismissal from service is also disproportionate to the gravity of misconduct alleged and held proved against him. On the last aspect, the learned counsel contends that under Regulation 30 of the Visakha Grameena Bank Staff Service Regulations, 1980 (for short 'the Service Regulations') other penalties could have been imposed, such as a reprimand and that dismissal being the gravest of penalties ought not to have been imposed. The learned counsel contends that the imposition of the penalty of dismissal from service is disproportionate and therefore unsustainable. The learned counsel would also contend that even during the course of enquiry and after the process of enquiry too, salary arrears were paid to him and also the fixed deposits invested in the Bank by the petitioner and his relatives were paid up by the Bank on maturity and from this an inference must be drawn that the Bank did not find anything wrong with his conduct.

On the first charge, the petitioner was accused of having connived with the Branch Manager and other members of the purchasing committee (a committee constituted for purchase of various livestock such as Milch animals, Sheep, Pigs, Plough cattle etc.) under IRDP Scheme; to have contrived shandy receipts prepared in the

names of the borrowers; to have obtained signatures of the committee members, buyers and sellers without purchase of animals and without attending the shandy. By such conduct, it was alleged that an amount of Rs.1,99,800/- was embezzled by the petitioner along with the Branch Manager, committee members and others. This charge also shows that a total amount of Rs.2,44,800/- was paid to the petitioner for the aforesaid purpose (i.e., for the purpose of purchase in the shandy). The left over balance of Rs.45,000/- was retained by the petitioner without accounting for or crediting the amount to the pending purchase account on 11-1-1990. Charge No.2 alleges that in order to conceal the misappropriation and embezzlement, the petitioner caused the disappearance of bank documents and had destroyed the pending purchase debit vouchers dated 11-1-1990 for Rs.2,44,800/- and instead prepared two separate vouchers in lieu thereof for Rs.1,99,800/- and Rs.45,000/- with his own hands and both these vouchers were not passed for payment but were entered in the pending purchase account register, cash scroll and daily transactions register erasing the original single entry of Rs.2,44,800/- so as to show that only Rs.45,000/- was paid to him on 11-1-1990 towards purchase of livestock. Charges 3 to 12 deal with other financial irregularities by the petitioner as a Field Officer, such as recommending credit loans for sanction without proper scrutiny as a consequence of which the amounts were disbursed and crops remained un-insured exposing the Bank to financial risk; and for failing to conduct post-sanctioning inspection in respect of the loans sanctioned on the petitioner's recommendation and such other serious financial irregularities by the petitioner in the course of his duties as an officer of the Bank.

The report of the Enquiry Officer discloses that in respect of each of the charges there is a detailed consideration, appreciation and analysis of the considerable oral and documentary evidence on record. The Enquiry Officer held chargers 1 to 11 and 12 (a) as proved

and charges 12 (b) and (c) not proved. The disciplinary authority concurred with the report of the Enquiry Officer on an independent appreciation and analysis of the evidence and the report of the Enquiry Officer and was satisfied with the punishment spelt out in Section 30(1) (f) of the Service Regulations, namely, the punishment of dismissal, and accordingly passed an order inflicting the punishment of dismissal of the petitioner from service.

In para 6 of the affidavit filed in support of the writ petition, the petitioner alleges that the Chairman and disciplinary authority having passed the order of dismissal on 30-11-1995 had also passed the appellate order rejecting the appeal dated 12-11-1996 and therefore, the appellate order is vitiated as there was no independent application of the appellate mind, since the disciplinary authority and the appellate authority were one and the same.

The Chairman and disciplinary authority as the 1st respondent has filed a counter-affidavit in which it is clearly and categorically asserted that "*the Chairman who is 1st respondent is the original authority and the board is the appellate authority and when the board proceedings took place, the Chairman has not participated hence the allegation that the disciplinary authority and the appellate authority are one and the same is not correct*."

The learned counsel for the petitioner has relied upon the decisions of the Supreme Court in ***A.K.Kraipak v. Union of India***[1], ***Amar Nath Chowdhury v. Braithwaite and Co. Ltd***[2]. and ***Suman Bala v. Union of India***[3] in support of his contention that an appellate order is vitiated where the primary authority also acts as an appellate authority.

It requires to be noticed that the principle that a primary authority acting as an appellate authority would vitiate the appellate

proceedings is too well settled to require an elaborate treatment. It is a cardinal principle of justice that it must not only be done but also appear to have been done. An appeal from a ceaser to a ceaser is impermissible and does not accord with our notions of a just and fair adjudicatory practice even in disciplinary proceedings. In the aforementioned cases cited by the petitioner, this settled principle of administrative law has been reiterated. The question however is, has there been a transgression of the requirement of fair appellate consideration. In the case on hand, the petitioner does not dispute the categorical averments in the counter-affidavit that the Chairman had not participated in the appellate proceedings by the Board. In ***A.K.Kraipak*** (1 supra) selections made to the Indian Forest Service from among the serving officers of the Forest department of the State of Jammu and Kashmir was in question in a factual context where one of the candidates was also a member of the selection committee, though he did not sit in the selection Board at the time his name was considered for selection. The Officer in question had however participated in the deliberations when the name of other candidates was being considered. In this factual context the Supreme Court held that the selection was vitiated notwithstanding that the said selection committee had only a recommendatory function and the recommendations of such selection committee had eventually to be considered by the Union Public Service Commission. Participation of a candidate in the process of selection though not at his own selection was held by the Supreme Court to be a gross transgression of the settled administrative principle that bias should be eschewed in the decision making process. In ***Amar Nath Chowdhury*** (2 supra) and ***Suman Bala*** (3 supra) also the respective disciplinary authorities who had passed the primary order had presided over and participated in the deliberations in the meeting of the appellate authority while deciding the appeal. This was considered to be a vitiating factor. In the case on hand and in view of the averments in the respondent's

counter that he did not participate in the appeallate board proceedings and in the further context that this assertion of the 1st respondent has not been denied or contested by the petitioner, it must be held that there was no transgression of the principle of natural of justice nor was there an element of bias which vitiated the appellate consideration.

The contention of the petitioner that the conduct of the Bank in paying arrears of salary during the course of enquiry and after the enquiry and in releasing the fixed deposit amounts on their maturity to him and his relatives suggests that the Bank did not consider his conduct as deleterious to its interest, is a contention that is stated to be rejected. The fixed deposits invested by the petitioner and his relations in the Bank could not have been withheld on their maturity. The petitioner has not shown any statutory or other legal basis for the Bank pursuing such a conduct, of withholding customers' money. When the petitioner invests or deposits money in the Bank he does so as a customer. The fact that he is also an employee of the Bank would not derogate from his entitlement to the money on the maturity of the fixed deposit. In the case of the petitioner's relations, the Bank had no right to withhold the amount due on their fixed deposits on their maturity. Regarding disbursement of arrears of salary to the petitioner during the course of enquiry and after that, the petitioner does not contend that those amounts were disbursed after the conclusion of the guilt or imposition of penalty. The petitioner's service tenure with the respondents Bank came to an end with the imposition of the penalty of dismissal from service. The petitioner was entitled to payment of salary or to subsistence allowance during the period he was in service or under suspension and the Bank could not have withheld amounts till the conclusion of guilt and the consequent punishment of dismissal was recorded. This contention of the petitioner does not commend acceptance for the aforesaid reasons.

It is vaguely and broadly contended on behalf of the petitioner

that certain witnesses had not been examined. The learned counsel for the petitioner at the oral arguments contends that apart from P.Ws. 7 and 8 (in respect of charge No.1) other vendors of Milch cattle and loanees were not examined and that PWs. 7 and 8 were inemically disposed against the petitioner on account of local political rivalry. Except a vague assertion at the oral arguments, there is nothing in the record of the disciplinary proceedings which supports even marginally this contention of the petitioner. If the petitioner was satisfied that there were other persons who could have deposed in the disciplinary enquiry in his favour, nothing prevented the petitioner from marshalling those witnesses as defence witnesses. It is settled on precedential authority that in a disciplinary enquiry all that is required to bring home a charge of misconduct is some probative evidence, which probablizes the guilt of the officer. Proof beyond reasonable doubt is not required and a conclusion in the disciplinary enquiry could be interfered with in judicial review only if a conclusion is based on no evidence. The petitioner has failed to establish that the conclusion in respect of any of the charges 1 to 12 is based on no evidence, nor is the petitioner is able to persuade this Court that the appreciation of oral and documentary evidence by the Enquiry Officer, as confirmed by the disciplinary and appellate authority was perverse.

The learned counsel for the petitioner has also contended that the punishment of dismissal from service is disproportionate to the established guilt of the petitioner. This contention is also without merit or force. The petitioner was found guilty of serious financial irregularities including embezzlement of Bank funds and temporary misappropriation of funds of the Bank. Charge No.1 itself is a grave charge of embezzlement of funds, which has been rightly found established against the petitioner. The punishment of dismissal from service is therefore, rationally proportionate to the established guilt of the petitioner. This contention is accordingly rejected.

For the aforesaid reasons, this court discerns no infirmity with the order of the disciplinary authority dismissing the petitioner from service or with the order of appellate authority confirming such conclusion of the disciplinary authority. There are no merits.

The writ petition is accordingly dismissed. In the circumstances, there shall be no order as to costs.

GODA RAGHURAM, J

08-08-2007
GRR

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[1] 1969 SLR 445
[2] (2002) 2 SCC 290
[3] (2005) 12 SCC 388